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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BYFORD “PETER” WHITTINGHAM, an
individual,

Plaintiff,

vs.

THE STATE OF NEVADA, ex. rel. NEVADA
ATTORNEY GENERAL’S OFFICE, a
Subdivision of the State of Nevada; DAVID
O’HARA, an individual, JANE DOE an
Individual; DOES 1-50, inclusive,

Defendants.

CASE NO. 2:20-cv-00811-GMN-EFY

STIPULATION AND ~~PROPOSED~~ ORDER
TO STAY DISCOVERY UNTIL A RULING
ON DEFENDANTS’ MOTION TO DISMISS
REVISED FIRST AMENDED COMPLAINT

(First Request)

Defendant, NEVADA ATTORNEY GENERAL’S OFFICE, by and through their attorneys,
AARON D. FORD, Attorney General for the State of Nevada, MICHELLE DI SILVESTRO ALANIS,
Supervising Senior Deputy Attorney General, and GERALD L. TAN, Deputy Attorney General, and
Plaintiff, BYFORD “PETER” WHITTINGHAM, by and through his attorneys, JENNY L. FOLEY,
ESQ. and DANA SNIEGOCKI, ESQ. hereby stipulate pursuant to LR IA 6-1, LR IA 6-2 and LR 26-3,
to stay all discovery in this matter pending the Court’s ruling on Defendants’ Motion to Dismiss Revised
First Amended Complaint (ECF No. 54). This is the first request to stay discovery since the filing of
Plaintiff’s Revised First Amended Complaint.

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1 **A. Discovery That Has Been Completed**

2 Both parties exchanged initial disclosures under Fed. R. Civ. P. 26(a). Plaintiff's initial
3 disclosures were served on October 20, 2020; Plaintiff's First Supplemental Initial Disclosures were
4 served on October 30, 2020. Defendant's initial disclosures were served on October 20, 2020. On July
5 26, 2021, a Stipulated Protective Order was entered.

6 **B. Discovery That Remains To Be Completed**

7 On June 7, 2021, Plaintiff served his First Set of Interrogatories and First Set of Requests for
8 Production of Documents on the Attorney General's Office and O'Hara. The parties agreed to extend the
9 time to respond to July 30, 2021. However, the parties have now agreed to a stay of discovery, so the
10 written responses, if still applicable, will be extended until after the Court's ruling on the Motion to
11 Dismiss.

12 Plaintiff may need to serve additional written discovery. Additionally, Plaintiff anticipates the
13 need to take the depositions of at least four percipient witnesses as well as the individual defendants.

14 Defendants will need to serve written discovery requests, including but not limited to, requests
15 for production, interrogatories, and requests for admission. Defendant also anticipates taking Plaintiff's
16 deposition and possibly one to two other witnesses.

17 **C. Reasons Why Discovery Has Not Been Completed and Reason for Stay of Discovery**

18 Since the entry of the Discovery Plan and Scheduling Order (ECF No. 33), the parties agreed to
19 stay discovery while they were awaiting a decision from the United States District Court Judge on the
20 adoption of the Magistrate Judge's Report and Recommendations regarding Plaintiff's Motion for Leave
21 to File a First Amended Complaint. Such stay was entered by the Court on November 30, 2020 (ECF No.
22 37). After entry of an order adopting the Magistrate Judge's Report and Recommendations (ECF No.
23 38), Defendant filed a Motion to Strike the First Amended Complaint (ECF No. 41). While the Motion
24 to Strike was pending, a Stipulation and Order was entered extending the remaining discovery deadlines
25 (ECF No. 45).

26 On May 12, 2021, the Court granted in part and denied in part the Motion to Strike and ordered
27 Plaintiff to file a Revised First Amended Complaint with redactions. (ECF No. 46). Plaintiff filed his
28 Revised First Amended Complaint (RFAC) (ECF No. 49) against Defendants, Nevada Attorney

1 General's Office, David O'Hara and Jane Doe. Service was accepted for David O'Hara (ECF No. 51).

2 On June 25, 2021, Defendants, Nevada Attorney General's Office and O'Hara filed a Motion to
3 Dismiss First Revised Amended Complaint (ECF No. 54). The pending motion seeks to dismiss the
4 RFAC in its entirety. Defendants argue that Plaintiff has failed to state a claim for Title VII retaliation
5 against the Attorney General's Office. Defendants further argue that Plaintiff has failed to state a claim
6 for § 1983 equal protection and § 1981 race discrimination against O'Hara and Jane Doe. Additionally,
7 Defendants argue that O'Hara and Doe are entitled to qualified immunity and discretionary function
8 immunity. Plaintiff has opposed the Motion to Dismiss and the arguments therein. However, the outcome
9 of the motion will be determinative of the scope of discovery in this case.

10 "The basic thrust of the qualified-immunity doctrine is to free officials from the concerns of
11 litigation, including 'avoidance of disruptive discovery.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 685 (2009)
12 (quoting *Siebert v. Gilley*, 500 U.S. 226, 236 (1991)). Thus, the parties do not want to engage in discovery
13 while the motion remains pending.

14 **D. Proposed Schedule for Completing all Remaining Discovery**

15 The parties propose a stay of all remaining discovery deadlines in this matter pending the Court's
16 ruling on Defendants' Motion to Dismiss Revised First Amended Complaint (ECF No. 54). The Court's
17 ruling on the Motion to Dismiss may affect the claims and parties at issue in this litigation and could
18 significantly alter the discovery in this case. Following the Court's ruling on the Motion to Dismiss, if
19 applicable, the parties will meet and confer within seven (7) days of the Court's order and submit a new
20 Discovery Plan and Scheduling Order within ten (10) days of conferring.

21 This is the parties' first request for a stay of discovery since the Revised First Amended Complaint
22 was filed. Defendant's Motion to Dismiss the RFAC remains fully briefed and pending before the Court,
23 and such motion is likely to determine the scope of discovery in this matter; thus, the parties believe a
24 stay of discovery would prevent the unnecessary expenditure of time and resources.

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1 This request is made in good faith and not for purposes of delay.

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3 DATED: July 28, 2021.

DATED: July 28, 2021.

4 AARON D. FORD
5 Attorney General

HKM Employment Attorneys. LLP

6 By: /s/ Michelle Di Silvestro Alanis
7 Michelle Di Silvestro Alanis (Bar. No. 10024)
8 Supervising Senior Deputy Attorney General
9 Gerald L. Tan (Bar No. 13596)
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Attorneys for Plaintiff
[Permission to sign electronically received
in writing]

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12 **ORDER**

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14 IT IS SO ORDERED.

15 IT IS FURTHER ORDERED that if the order
16 issued regarding the pending Motion to Dismiss
17 does not dispose of the entire dispute, the parties
18 **shall, within ten (10) days of such order,**
submit a revised proposed discovery plan and
scheduling order.

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21 UNITED STATES MAGISTRATE JUDGE

22 Dated: July 28, 2021
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